IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 991 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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UNION OF INDIA & 1 - Appellant(s)
Versus
NANABHAI BHODUBHAI KOLI & 2 - Defendant(s)

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Appearance :
MR RP BHATT for Appellant(s) : 1 - 2.
MR JC SHETH for Defendant(s) : 1,
None for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/07/2006

ORAL JUDGMENT

1. By way of this appeal, the appellants have challenged the judgement and award dated 20.10.84 passed by the Motor Accident Claims Tribunal (Main) Panchmahals at Godhra in MACP No. 207/83 whereby the Tribunal awarded Rs. 68,750/- by way of compensation payable to the original claimants by original respondent nos. 1 & 3.

2. The original claimants-respondent nos. 1 & 2 herein filed claim petition seeking compensation to the tune of Rs. 83,150/- in respect of the accident which occurred on

04.03.83 on Dahod-Godhra Highway near Panam river bridge when the son of the original claimants, who was a labourer on truck no. GTK 4763 for loading sand from the Panam river bed, was travelling in the said truck driven by the original opponent no.1, owned by original opponent no.3 and belonging to original opponent no.2. After crossing Panam river bridge and travelling a further distance of about one and half kilometers, the original opponent no.1 stopped the truck for the deceased to get down. The deceased was getting down from the truck from the cleaner's side when the driver abruptly started the truck crushing the deceased under it. The deceased succumbed to the injuries as a result of the said accident. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellants has contended that the Tribunal has not awarded the compensation in accordance with law in view of the fact that this was a case of contributory negligence if at all. He has also relied on the decision **Ranchhodbhai Somabhai v. Babubhai Bhailalbhai** reported in **1982 G.L.H. pg. 28 and Smt. Rafia Sultan Widow of Mirsa Sultan Alil v. Oil and Natural Gas Commission reported in 1985 (2) G.L.R. pg. 1315** to submit that the Tribunal has not properly considered the law

laid down in the above decisions while compensating the original claimants.

4. Heard learned counsel for the parties. From the evidence of the eye witness at Exh. 37 and other documentary and oral evidence, it appears that the vehicle in question was being driven in an excessive speed and in a rash and negligent manner. The totality of the evidence on record clearly proves that the driver of the vehicle was driving the offending truck in an excessive speed and in such a manner as to endanger human life.

5. From the documentary evidence available on record, it is evident that the age of the deceased at the time of the said accident was only 15 years. The deceased was a young boy and had the whole life before him. In this context, it would be relevant to refer to a Division Bench decision of this Court in the case of **Ranchhodbhai Somabhai (supra)** wherein, it has been held that two third of the datum figure would be diverted by the deceased for the maintenance of his own family and one third for the maintenance of his parents. Similar principle has been laid down in a subsequent decision of this Court in the case of **Smt. Rafia Sultan(supra).**

6. In the case on hand, the Tribunal has arrived at a figure of Rs. 57,600/-. The said figure has been arrived at by taking the monetary dependency of the parents to be Rs. 300/- per month and by granting a multiplier of 16 years. Looking to the facts and circumstances of the case and keeping in mind the age of the deceased, I am of the view that the Tribunal ought to have considered the aforesaid decisions while granting the amount of compensation. In that view of the matter, the original claimants-respondent nos. 1 & 2 herein shall be entitled to Rs. 35,100/- only towards dependency benefits and the remaining amount is required to be refunded to the Insurance company.

7. For the foregoing reasons, appeal is allowed. The original claimants shall be entitled to Rs. 46,250/- by way of compensation and Rs.22,500 /- shall be refunded to the Insurance Company. The award of the Tribunal is modified accordingly. No order as to costs.

(K. S. JHAVERI, J.)

Divya//